

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 343 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA  
AND  
MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

-----  
BHANGDABHAI SOMABHAI

Versus

STATE OF GUJARAT

-----  
Appearance:

MR KG SHETH, advocate appointed for the petitioner.  
MR. SR DIVETIA, A.P.P. for Respondent.

-----  
CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE S.D.PANDIT  
Date of decision: 02/05/97

ORAL JUDGEMENT (Per N.J. Pandya, J.)

Two accused came to be brought before the learned Additional Sessions Judge, Surat in Sessions Case No. 110/88 in reference to the incident which happened on 13-5-1988 at about 9-00 p.m. The accused no.1 armed with stick gave blows to deceased Laxman Gopal and caused

internal injuries and ruptured carotid artery leading to profuse internal hemorrhage to eventual death.

2. The second accused is said to have played only part of encouraging the accused no.1 and generally lending support. The learned Trial Judge by his judgment dated 17-5-1989 was pleased to acquit the accused no.2 and convicted the accused no.1 for the offence punishable under Section 302 of the Indian Penal Code and awarded life imprisonment.

3. For the aforesaid conclusion the learned Trial Judge has relied upon the F.I.R. which is said to have been given by the accused - appellant himself. Obviously, this would be hotly debatable question because on reading one would find that he has squarely made his guilt before the police and therefore it is likely to hit by Section 25 of the Evidence Act. F.I.R. is exhibited at exh.31 by the learned trial Judge as per discussion thereof in para 20. Of course the learned Judge in the said para is mindful of the fact that, that part of the F.I.R. cannot be taken in evidence and the remaining part alone can be read in the evidence. To this extent his reasoning cannot be faulted with. However, materials relied upon by him is the testimonies of two witnesses, One Mangiben p.w. no.5 exh.20 and other Manjulaben pw. no. 6 exh. 21.

4. Mangiben Exh.20 at page 31 of the paper-book has narrated the incident in great detail and was cross-examined extensively. She is one of the daughters of the deceased. Manjulaben p.w. no.6 exh. 21 has narrated the incident in brief and her cross-examination on page 35 of the paper-book is also in brief. Third witness is Manharbhai p.w. no.3 exh. 16.

5. Taking evidence of the witness and on reading it one finds that the accused no.1 had approached this witness who is a social worker in the area and member of Taluka Panchayat informing him that the accused appellant had quarrel with the deceased Laxmanbhai. The accused does not disclose before this witness Manharbhai that in this quarrel Laxmanbhai has lost his life. Manharbhai instead of allowing the accused to give all the details to him has advised that the accused should go to the police station and narrate his story. That is how the said F.I.R. was filed at 8-00 a.m. on 14-5-1988 at the instance of the witness which eventually came to be exhibited at exh.31. Said two sisters p.w. nos. 5 and 6 have stated that they were outside the house and they were sitting on the "otala" and saw the incident. They

have stated before the police that they were in the house and were preparing bed to sleep.

6. However, incident is in two parts. First part is regarding verbal quarrel between the deceased and one Savita wife of Nathu Morar and there were filthy abusing. On hearing this verbal quarrel accused came with a stick and started to beat the deceased. First blow was given on legs as a result of which the deceased fell down. Thereafter blows were given on the neck, one of which proved fatal on account of rupture of carotid artery.

7. Mr. Sheth, learned Advocate appearing for the accused has vehemently argued that the evidence of these two women who are treated as eye witnesses is contrary to one another and evidence of the witness should not be accepted of a person who is not really an eye witness. They first came in contact of Dashrathbhai who met them on the road because after the incident these two women proceeded on the road weeping and crying. Said Dashrath took them at his residence and from there at 11-00 a.m. they reached Police Station, at Kamrej Dist. Surat and their statements came to be recorded. By that time the complaint having been recorded obviously Police thought that there is no need to take complaint of these two witnesses and recorded their statements.

8. In cross-examination these two women had not disclosed anything material. However, cross-examination of Mangiben reveals that Dashrathbhai was in know of the incident and because of apprehension of being beaten in the same manner as the deceased was so beaten by the accused he has remained silent. This is in our opinion an usual happening in villages. In a house where male member is killed in this manner and two daughters later on left the village as there was no one to take risk and if any incident happens to any one and on narrating it tendency in the village is to be away as far as possible so that they may not be implicated in future by the police for investigation or trial if one materialise.

9. There is substance in the evidence of these two women who were in the house. Their presence is quite natural as they are the daughters of the deceased. They were sisters too and on hearing verbal exchange they came out and thereafter the incident happened and therefore we agree with the learned Judge that they were eye witnesses and they are worthy of credence.

10. P.M. note exh.24 at page 41 of the paper-book clearly establishes internal injury leading to rupture of

carotid artery and contused lacerated wounds because of blows of stick. Under the circumstances, there is no external bleeding. Panchanama of scene of offence Exh.11 page 21 also indicates that blood was not found at the spot.

11. This has lead to the consideration whether the act of the accused appellant is that of murder or act of culpable homicidal not amounting to murder. This argument is advanced by Mr. Sheth in the alternative. He has pointed out seven injuries noted in the said p.m. note. Looking to the F.I.R. it is the case of the accused -appellant that the deceased had come with stick at the back door of his house and abused the inmates of the house. The accused - appellant was taking his meal and caught hold of the stick and gave stick blows to the deceased and the incident happened.

12. Under the circumstances, it is not possible to hold that the injuries which are on the legs and neck of the deceased were delivered with the intention of causing his death. If at all this was the intention after the blows were given on legs, the deceased fell down and was lying on the ground the accused would have selected vital parts of the deceased and blows could have been delivered there. The intention to cause the injury whereby the deceased would stop giving abuses and in future also he would stop to abuse and one of the injuries was on the neck and therefore death was caused.

13. No doubt, the accused must be held responsible for the act that he has done. It being consequence of his actions. In the circumstances conclusion is that the death we believe was not intended.

14. Therefore, we accept alternative plea and hold that instead of convicting the accused for the offence punishable u/s 302 of the IPC he is held responsible for the offence punishable u/s 304 Part (ii) of the IPC. He is in the jail from the date of the incident i.e. from 14-5-1988. We, therefore, award him 9 (nine ) years sentence. The appeal is partly allowed.